

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 749 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RAJESH @ BHURIYO @ KOKO SAMARSINH RAJPUT

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 01/05/2000

ORAL JUDGEMENT

#. The petitioner - Rajesh @ Bhuriyo @ Koko Samarsing Rajput has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by Commissioner of Police, Ahmedabad City, Ahmedabad, in exercise of powers under Section 3(1) of the PASA Act,

dated December 27, 1999.

#. The grounds of detention indicate that the detaining authority took into consideration 4 offences registered against the petitioner. The detaining authority also took into consideration the statements of two anonymous witnesses in respect of two incidents that occurred on December 3, 1999 and December 14, 1999 and came to conclusion that the petitioner is a "bootlegger", that his activities are detrimental to public order, that fear expressed by the witnesses qua the petitioner was genuine and therefore, powers under section 9(2) of the PASA Act were exercised by the detaining authority by not disclosing identity of these witnesses.

#. The petitioner has challenged this order of detention on various counts. However, learned advocate for the petitioner has restricted his arguments to the fact that the subjective satisfaction recorded by the detaining authority for the need for exercise of powers under Section 9(2) of the PASA Act, cannot be considered as genuine. In order to substantiate this submission, learned counsel submitted that the statements of two anonymous witnesses were recorded on December 23, 1999 and December 26, 1999, which were verified by the detaining authority on December 27, 1999 and the order of detention is passed on December 27, 1999. Learned counsel submitted, therefore, that there was no time for the detaining authority to give consideration to the aspect of correctness and genuineness of the facts stated by the witnesses and the fear expressed by the witnesses, respectively, in their statements. The exercise of powers under Section 9(2) of the PASA Act is improper and has resulted into denial of right of making an effective representation as contemplated under Article 22 (5) of the Constitution. Learned counsel for the petitioner therefore, submitted that, in light of the decision of a Division Bench of this Court in the case of Kalidas Chandubhai Kahar v. State of Gujarat & Ors. 1993 (2) GLR 1659, this petition may be allowed.

#. Mr. K.T. Dave, learned AGP has opposed this petition.

#. It is clear from the grounds of detention that the detaining authority has taken into consideration the statements of two anonymous witnesses. The authority came to a conclusion that the fear expressed by these witnesses is correct and genuine and, therefore, the authority exercised powers under Section 9(2) of the PASA Act by not disclosing the identity of the witnesses.

This Court is at loss to appreciate how the detaining authority could have arrived at this conclusion in such short spell. The detaining authority has not filed any affidavit-in-reply. It is, therefore, not possible to know as to what were the factors and material considered by the detaining authority besides the statements of the anonymous witnesses to come to conclusion that the fear expressed by the witnesses was genuine, that the incidents stated by the witnesses were correct and that there was need for exercise of powers under Section 9(2) of the PASA Act.

#. Apart from this, another aspect that requires consideration is that while the order of detention was passed, the detainee was on police remand. The authority has observed that on completion of remand period, he would be produced before the Court and he may be bailed out and therefore, he is detained while he is in custody. The authority has not been able to indicate any compelling reasons or circumstances for detaining the petitioner while he was in custody. This would, vitiate the order of detention as immediate need for detaining the person is not shown to be well founded. In this regard, the decision in the case of Sanjeev Kumar Aggarwal v. Union of India, AIR 1990 SC 1202 can be pressed into service. The petition therefore, deserves to be allowed.

#. The petition is allowed. The impugned order of detention dated December 27, 1999 is hereby quashed and set aside. The detainee - Rajesh @ Bhuriyo @ Koko Samarsing Rajput is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

pirzada/-